

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
: 16 Cr. 763 (LGS)
-against- :
: ORDER
IVAN VOYCHAK, :
Defendant. :
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LORNA G. SCHOFIELD, District Judge:

Background

WHEREAS, on April 3, 2020, Defendant filed a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). On April 6, 2020, the Government filed its response in opposition;

WHEREAS, on November 13, 2017, Defendant pleaded guilty to one count of Conspiracy to Commit Health Care Fraud, Mail Fraud and Wire Fraud in violation of 18 U.S.C. § 1349, and one count of Health Care Fraud in violation of 18 U.S.C. § 1347. On July 19, 2018, Defendant was sentenced to thirty-six months' incarceration followed by three years of supervised release;

WHEREAS, Defendant represents that he is currently housed at the Brooklyn Residential Center, and that he is scheduled to be released to home confinement on April 18, 2020;

WHEREAS, the President of the United States has declared a national emergency due to the spread of the COVID-19 virus. The first COVID-19 case in the State of New York was confirmed on February 29, 2020. *See Coronavirus in N.Y.: Manhattan Woman is First Confirmed Case in State*, at <https://www.nytimes.com/2020/03/01/nyregion/new-york-coronavirus-confirmed.html>. As of April 7, 2020, there were 138,836 confirmed cases. *See*

Coronavirus in the U.S.: Latest Map and Case Count, at

<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last viewed April 7, 2020). Over 5,000 persons have died in New York of the virus and over 11,900 have died nationwide. *Id.*;

WHEREAS, 18 U.S.C. § 3582(c)(1)(A)(i) provides that the court “may reduce the term of imprisonment” only if it finds that “extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”;

WHEREAS, the relevant Sentencing Commission Policy Statement, U.S.S.G. § 1B1.13, provides that the Court may reduce a term of imprisonment if three conditions are met: (i) extraordinary and compelling reasons warrant the reduction, *id.* § 1B1.13(1)(A); (ii) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g), *id.* § 1B1.13(2); and (iii) the reduction is consistent with this policy statement, *id.* § 1B1.13(3); *accord United States v. Gotti*, No. 02 Cr. 743-07, 2020 WL 497987, at *1–2 (S.D.N.Y. Jan. 15, 2020);

WHEREAS, the Application Notes to the Policy Statement provide in relevant part that “extraordinary and compelling reasons” exist where the defendant “is suffering from a serious physical or medical condition,” “that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13, Application Note 1(A);

WHEREAS, Defendant is forty years old, and represents that he has a history of clonic seizures. Defendant does not assert that a history of clonic seizures puts him at higher risk of infection with, or severe disease or death from, COVID-19. It is hereby

ORDERED that Defendant's motion for compassionate release is DENIED. Defendant has not demonstrated the requisite extraordinary or compelling circumstances. *See United States v. Gileno*, No. 3:19 Cr. 161-1, 2020 WL 1307108, at *3 (D. Conn. Mar. 19, 2020) (finding a defendant suffering from anxiety, high blood pressure, high cholesterol, asthma and allergies had "not shown that his medical issues are sufficiently serious to modify his sentence to home confinement" under 18 U.S.C. § 3582(c)(1)(A)).

Dated: April 7, 2020
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE